

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
WILLIAM PELZER,

Plaintiff,

-against-

DETECTIVE RICHARD T. SCHINDER
and SUFFOLK COUNTY POLICE,

Defendants.
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ORDER ADOPTING REPORT &
RECOMMENDATION
01-CV-2253 (JS)(JO)

Appearances:

For Plaintiffs: William Pelzer, Pro se
No. 03A3518
Great Meadow Correctional Facility
11739 State Rte. 22
Comstock, NY 12821

For Defendant: Brian C. Mitchell, Esq.
Suffolk County Dept. of Law
P.O. Box 6100
100 Veterans Memorial Highway
Hauppauge, NY 11788

SEYBERT, District Judge:

On April 11, 2001, Plaintiff commenced the instant action alleging violations of 42 U.S.C. § 1983. On October 28, 2005, after expending considerable effort to assiduously move this matter to trial, Magistrate Judge James Orenstein issued a Report and Recommendation concluding that this action should be dismissed with prejudice due to Plaintiff's failure to prosecute. The Court hereby ADOPTS the Report and Recommendation in its entirety.

The Report and Recommendation provided that any objections were to be filed within ten (10) days of receipt of the Report and that "failure to file objections . . . will preclude

further appellate review of the District Court's order." Defendants have filed an affidavit of service indicating that Plaintiff was served, via U.S. mail, with a copy of the Report and Recommendation on November 7, 2005. The time for filing objections to the Magistrate Judge's Report and Recommendation has expired and no party has objected. In addition, the Court has reviewed the Magistrate Judge's Report and Recommendation and finds it to constitute a proper application of prevailing law. See Alvarez v. Simmons Market Research Bureau, Inc., 839 F.2d 930, 932 (2d Cir. 1988).

On July 7, 2005 Magistrate Judge Orenstein issued a scheduling order. Magistrate Judge Orenstein informed Plaintiff that failure to comply with the terms of the order might result in the dismissal of his Complaint. Rather than appropriately respond to the scheduling order, Plaintiff filed two letters indicating that he wished to voluntarily discontinue the action. Plaintiff did not indicate whether he intended the dismissal to be with, or without prejudice.

Normally, such silence could be considered indicative of Plaintiff's wish to withdraw the action without prejudice. However, Magistrate Judge Orenstein determined that Plaintiff's dilatory and, at times, incomprehensible conduct in marshaling this action (coupled with the fact that Plaintiff was provided notice that the action could be dismissed for continued non-compliance)

required that, irrespective of Plaintiff's wishes, this action should be dismissed with prejudice. Plaintiff's failure to object to the Report and Recommendation affirms the propriety of this conclusion.

Accordingly, the Court hereby ADOPTS the Report and Recommendation in its entirety. This action is hereby DISMISSED with prejudice. The Clerk of the Court is directed to mark this matter as CLOSED.

SO ORDERED

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York
December 12, 2005